***THE HONOURABLE SRI JUSTICE A.GOPAL REDDY**

+W.P.No.17508/2002

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% FIFTH DAY OF JULY, TWO THOUSAND FOUR

#M/S. Empee Sugars & Chemicals Ltd., represented by its Senior Vice-President Sri R.Chandra Mohan, Naidupet, Nellore ..Petitioner

Vs.

$ 1. The Government of A.P.represented by its Secretary Industries & Commerce (Sugar) Department, Secretariat, Hyderabad and others ..Respondents

! Counsel for the revision petitioner: Sri C. Kodanda Ram, Advocate

^ Counsel for the respondents 1 and 2: GP for Industries & Commerce

Counsel for respondents 3 to 7 : Sri Surya Prakash Rao, Advocate

< Gist:

>Head Note

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IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FIFTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 17508 of 2002

Between:

M/s. Empee Sugars & Chemicals Ltd. Rep. by its Senior Vice President Sri. R.Chandra Mohan.
Naidupet, Nellore.

..... PETITIONER

AND

1 The Govt. of A.P. rep. by its Secretary Industries & Commerce (Sugar) Department, Secretariat,
Hyderabad.
2 The Director of Sugar Cane Commissioner, Nampally, Hyderabad - 500 001.
3 The Assistant Sugar Cane Commissioner, Guntur.
4 B.Parandhama Reddy (died) S/o. Narasimha Reddy
5 B.Rajamma W/o. B.Parandhama Reddy
R/o. Rebala Village and Post, Nellore Mandal, Nellore District.
6 B.Dhayakar Reddy s/o. B.Parandhama Reddy
R/o. Rebala Village and Post, Nellore Mandal, Nellore District.
7 B.Lakshmikanthamma W/o. B.Dayakar Reddy
R/o. Rebala Village and Post, Nellore Mandal, Nellore District.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a writ, order or direction, more particularly one in the nature Writ of certiorari after calling for records and to quash the impugned proceedings in Memo No.24147/Sug/A1/2001-02 Dt. 30-7-2002 issued by the 1st respondent on the orders of 2nd respondent in Rc.No.C1/23542/96 Dt.6-10-2001 as illegal, null and void and against the principles of natural justice and arbitrary.

For the Petitioner: M/SC.KODANDA RAM, Advocate

For the Respondents No.1 to 3: GP FOR INDUSTRIES & COMMERCE

For the respondents 5 to 7: Sri Surya Prakash Rao, Advocate

The Court made the following :

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ORDER:

The present case reflects and demonstrates, the petitioner left no stone unturned to exploit the procedural wrangles to defeat the ends of justice. Justice appears to be endlessly elusive even after an award obtained by poor agriculturists who are in a zone marked by growing hunger and a fragile equilibrium. Any delay in receiving the

award amount which they are entitled will push them a decade back leaving them to their own plight in a society that showed no concern for them.

The relevant facts shorn of details and necessary for the disposal of the case lie in a narrow compass are as under:

On petitioner's establishing an industry for the manufacture of sugar, alcohol based chemicals etc., necessary notification was issued declaring factory zone under the provisions of the A.P. Sugarcane (Regulation of Supply and Purchase) Act,1961 (for short "the Act"). On issuance of such notification, the sugar factory has to enter into an agreement with the sugarcane growers of the factory area declared to purchase the sugarcane as per Rule 20(2) of the A.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1961 (for short "the Rules"). The issuance of notification disentitles the sugarcane growers from supplying the cane grown by them to any other factory or manufacturing of jaggery from the sugarcane grown by them. The petitioner accordingly entered into an agreement with R-4 to R-7 for supply of cane in 1992-1993 and 1993-94 season when it ripe for harvesting in September, 1993. Respondents 4 and 5 planted sugarcane crop in an extent of Ac.10-00 cents and respondents 6 and 7 in an extent of Ac.3-50 cents each on entering into the said agreements. When the crop is ready for harvesting, unless the petitioner-factory issues cutting orders, they cannot cut and transport the same to the sugar factory nor can supply to any other factory nor utilize the same for manufacturing jaggery. Failure to issue cutting permits which resulted in loss to the respondents 4 to 7, they invoked the arbitration clause in para 5 of the agreement which provides that in the event of second party (petitioner-factory) willfully failing to take delivery of cane which the first party is read to deliver in accordance with the agreement, the second party shall be liable to pay to the first party the actual price of the quantity of such cane which it fails to purchase together with interest at the rate of 9% per annum for the period of delay in such payment, by making their claim before the Cane Commissioner, who appointed Joint Director of Agriculture, Nellore as Arbitrator vide proceedings in C1/12002/1994 dt. 8-11-1994. The Arbitrator passed an award rejecting the claim but awarded nominal compensation of Rs.75,000/-. Aggrieved by the same, the respondents 4 to 7 filed an appeal before the Director of Sugar and Cane Commissioner, Hyderabad, who dismissed the same in RC No.12002/1994 dt. 15-5-1996. Aggrieved by the said order, the respondents 4 to 7 filed WP No.2009/1996 before this court, which was allowed on 18-8-98 remanding the

matter for fresh consideration. On such remand, the Arbitrator (Joint Director of Agriculture, Nellore) while disbelieving the version of the petitioner-factory about its function during the period from August, 93 to January, 1994 and issuing cutting permits during the said months in the light of reply sent by the factory dt. 6-12-1993,Ex.A-22 and genuineness of which is not disputed by the factory, passed an award directing the petitioner-factory to pay total compensation at Rs.10,15,000/- with interest at 9% per annum till the date of realization. Aggrieved by the same, the petitioner filed an appeal before the second respondent. For due recovery of the amount awarded under award, the respondents 4 to 7 filed EP No.23/2000 before the II Additional District Judge's Court, Nellore. In view of the same, the petitioner filed WP No.25191/2001 seeking suspension of the award pending disposal of the appeal. The said writ petition was disposed of directing the appellate authority to dispose of the matter. Pursuant to the directions of this court, the second respondent through her proceedings in RC No.C1/23542/96 dt. 6-10-2001 partly allowed the appeal reducing the compensation awarded to Rs.2,38,750/-. Aggrieved by the same, the petitioner-factory filed a further appeal before the government, which was dismissed by the Government, through its Memo No.24147/Sug/A1/2001-7 dt. 30-7-2002. Challenging the order passed by the second respondent as confirmed by the first respondent through its memo dt. 30-7-2002, the present writ petition is filed.

Learned counsel for the petitioner fairly and rightly so did not challenge the correctness of the findings in the award while awarding compensation by the Arbitrator, as modified by the second respondent through her proceedings dt. 6-10-2001 since the scope of judicial review against the award is very limited. However, he contends that enhancement of interest from 9% to 15% by the second respondent as per sub-section (2-A) of Section 19 of the Act suffers from illegality and the same cannot be made applicable to the facts of the present case since no cane is supplied to the petitioner-factory.

Learned counsel for the respondents 4 to 7 contended that petitioner first time raised the said argument across the bar and it did not urge either before before the Government or there is any pleading to the said effect in the writ petition. In view of the same, the said argument cannot be raised at the time of arguments.

Since the arguments revolve around interpretation of sub-section (2-A) of Sec. 19 of the Act, it is appropriate to have a glance over the said provision.

"**19. Payment of cane price**:

1. x x x x x ;

2. Upon the delivery of cane, the occupier of a factory or owner of a khandasari unit shall be liable to pay within fourteen days from the date of such delivery the price of cane so supplied.

(2-A) The price of the cane remaining unpaid on the expiration of the period specified in sub-section (2) shall carry interest at fifteen per cent per annum from the date of delivery of cane and it shall be recovered as an arrear of land revenue.

(3) to (5) x x x x."

It is also relevant to notice the agreement conditions prescribed in Form-4 under Rule 20(2). Agreement condition No.6 in Form-4 emphasizes that in the event of the second party (factory) wilfully failing to take delivery of the cane, which the first party is ready to deliver in accordance with the agreement, the second party shall be liable to the first party the actual price of the quantity of such cane which it fails to purchase. In the event of the second party otherwise than willfully failing to purchase cane in accordance with the agreement, it shall be liable to pay the first party compensation at a rate not exceeding fifteen naya paise per forty kilograms for such quantity of cane as the second party fails to buy. Similar conditions were also laid down in the case the cane grower fails to supply the agreed quantity to the factory.

In view of the above conditions and statutory provision, the cane grower is under an obligation to supply cane grown by him as per the terms and conditions of the agreement and equally the petitioner-factory is under obligation to purchase the same. When the agreement itself provides that cane grower is entitled to compensation, the petitioner-factory is liable to pay the cane grower the actual price of the quantity of such cane which it fails to purchase. In view of the same, the intention of the legislature in making the rules is that the quantity for which the cane

grower entered into an agreement to supply has to be taken as actual supply, to which the factory is liable to pay compensation which is determinable as per Section 19 of the Act. Once it is deemed to have been delivered and cane grower is entitled to compensation the price of such cane, which is refused to be purchased, sub-section (2-A) of Section 19 of the Act imposes a liability on the factory to pay interest at the rate of 15% per annum as if the cane was delivered on the due date. In view of the same, interest awarded by the appellate authority is only as per sub-section (2-A) of Section 19 of the Act, which is a statutory liability. The petitioner having filed an appeal before the Government has not raised any objection with regard to awarding of interest and in the absence of any pleading to the said effect, it cannot surpass the pleadings in the writ petition. Moreso, once it is a statutory liability, I see no infirmity is discernible in awarding interest by the appellate authority. Hence, I see no merit in the submission made by the learned counsel for the petitioner that the appellate authority exceeded its jurisdiction in awarding interest at 15% from that of 9% awarded by the Arbitrator.

The writ petition fails and it is accordingly dismissed. No costs.

A.GOPAL REDDY,J

Dt.5-7-2004

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To

1 The Govt. of A.P. rep. by its Secretary Industries & Commerce (Sugar) Department, Secretariat, Hyderabad.
2 The Director of Sugar Cane Commissioner, Nampally, Hyderabad - 500 001.
3 The Assistant Sugar Cane Commissioner, Guntur.
4. 2 ccs to the Govt., Pleader of Commerce and Industries, High Court Buildings, Hyderabad.

5. 2 CD copies.